

**Final Order Denying Refund: 04-20170553R
Sales and Use Tax
For Tax Year 2015**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Retail merchant retail was not entitled to a refund of state gross retail that it collected since the retail merchant did not establish that the tax was refunded to its customer in a manner compliant with the governing statute for refunds.

ISSUE

I. Sales and Use Tax—Refund.

Authority: IC § 6-2.5-6-13; IC § 6-2.5-6-14; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014).

Taxpayer protests the denial of its claim for refund.

STATEMENT OF FACTS

Taxpayer is a company that filed a Claim for Refund (GA-110L) with the Indiana Department of Revenue ("Department"). Taxpayer believes that it erroneously collected and remitted sales tax to the Department, and thus filed a refund claim. The Department denied Taxpayer's refund claim in a letter dated June 12, 2017. Taxpayer in turn filed a protest with the Department; Taxpayer chose to have a final determination made on the protest without an administrative hearing. This Final Order Denying Refund results. Further facts will be presented as required.

I. Sales and Use Tax—Refund.

DISCUSSION

The Department initially notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as all the Department's previous decisions, shall be entitled to deference.

Taxpayer states in correspondence to the Department the following:

We billed by mistake our sales tax exempt customer [hospital] sales tax \$2,888.90 in June 2015. In July 2015, [o]ur customer [hospital] provided their sales tax exempt certificate and disputed the tax, accordingly, we issued the tax credit to them. However, we already filed our sales tax return and fully remitted our tax payment which included the \$2,888.90. So we filed the refund claim . . . with supporting document (customer's sales tax exempt certificate/original invoices/credit memo/original return and payment records). We have provided the further documents per the request we received in March 2016, however we are not clear of the reason why the refund claim was denied.

Turning to the applicable statutes, IC § 6-2.5-6-13 states:

A person is entitled to a refund from the department if:

(1) a retail merchant erroneously or illegally collects state gross retail or use taxes under this article from the person;

- (2) the retail merchant remits the taxes to the department;
- (3) the retail merchant does not refund the taxes to the person; and
- (4) the person properly applies for the refund under the refund provisions contained in [IC 6-8.1-9](#).

Taxpayer, for the period at issue, was a retail merchant, thus IC § 6-2.5-6-14 is applicable:

Notwithstanding the refund provisions of this article as incorporated from the gross income tax law ([IC 6-2.1](#), repealed), a retail merchant is not entitled to a refund of state gross retail or use taxes unless the retail merchant refunds those taxes to the person from whom they were collected.

In correspondence dated December 28, 2016, Taxpayer provided a photocopy of a "credit memo" to the hospital. However, Taxpayer did not refund the tax—as outlined by IC § 6-2.5-6-14—to the hospital, instead Taxpayer provided the hospital with a *credit* in the amount of tax at issue. Additionally, Taxpayer states:

We noticed there is a credit of \$2,888.90 on our books representing a sales tax receivable from State of Indiana. This is the result of our refunding sales and use tax to our customers. The sales operations of this location [i.e., Taxpayer's Indiana location] will be moved to our affiliate in [another state] and there will be no future transactions to offset this credit.

Taxpayer has not established that the hospital in question used the credit that Taxpayer gave to it—particularly since Taxpayer is no longer doing business in Indiana (given Taxpayer's moving its sales operation to another state), thus it is unclear how the hospital could have used the "credit" that Taxpayer provided to the hospital in lieu of an actual refund.

In order to qualify for the refund under the applicable statute, Taxpayer would need to establish that it refunded the taxes to the hospital—and even if, *arguendo*, the "credit" to the hospital was functionally similar to an actual refund, Taxpayer has not shown that the hospital in fact used the credit.

FINDING

Taxpayer's protest is denied.

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